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13 **UNITED STATE DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 ANNE VICUNA, an individual;

16 Case No: 2:13-cv-00442-GMN-NJK

17 Plaintiffs,

18 vs.

19 RAUSCH, STURM, ISRAEL, ENERSON &
20 HORNIK, LLC, a foreign corporation

21 Defendants.

22 **MOTION TO SET ASIDE ORDER**
23 (#7)

24 **AND ORDER**

25 COMES NOW, Plaintiff, Anne Vicuna, by and through her attorney of record, Larson A.
26 Welsh, Esq., with Cogburn Law Offices, and hereby moves this Court for an Order Setting Aside
27 the Order filed by this Court on August 21, 2013 (#7).

28 This Motion is based upon the attached Memorandum of Points and Authorities and the
29 papers and pleadings on file herein.

30 **MEMORANDUM OF POINTS AND AUTHORITIES**

31 **I.**

32 **STATEMENT OF FACTS**

33 In early August 2013, Plaintiff and Defendant reached a settlement in this matter and
34 agreed to file a Notice of Voluntary Dismissal pursuant to FRCP 41(a)(1). Due to a clerical error,
35 oversight and omission by Plaintiff's counsel, the Notice of Voluntary Dismissal with Prejudice
36 was not filed in a timely manner. For this reason, The Court dismissed the case without prejudice

1 pursuant to Rule 4(m). For the reasons set forth herein, Plaintiff files this Motion to set aside the
 2 Order (#7) and requests permission to file a Notice of Dismissal with Prejudice, pursuant to
 3 FRCP 41(a)(1).

4 **II.**

5 **LEGAL ARGUMENT**

6 This Court has authority to grant the relief requested pursuant to FRCP 60 which states,
 7 in the pertinent part, as follows:

8 (a) **CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND**
 9 **OMISSIONS.** The court may correct a clerical mistake or a mistake arising from oversight
 10 or omission whenever one is found in a judgment, order, or other part of the record. The
 11 court may do so on motion or on its own, with or without notice. But after an appeal has
 12 been docketed in the appellate court and while it is pending, such a mistake may be
 13 corrected only with the appellate court's leave.

14 (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion
 15 and just terms, the court may relieve a party or its legal representative from a final
 16 judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence,
 17 surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable
 18 diligence, could not have been discovered in time to move for a new trial under Rule
 19 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
 20 misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been
 21 satisfied, released, or discharged; it is based on an earlier judgment that has been reversed
 22 or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that
 23 justifies relief.

24 As stated above, Plaintiff and Defendant agreed to a settlement in early August 2013,
 25 prior to the Court dismissing the case pursuant to FRCP 4(m), without prejudice. Plaintiff's
 26 counsel however, made a clerical mistake, oversight and omission and failed to file the Notice of
 27 Dismissal with Prejudice, as contemplated by the settlement agreement. As such, there is good
 28 cause to (1) set aside the Court's Order (#7) dismissing this case without prejudice and (2) to
 permit Plaintiff to file a Notice of Dismissal with Prejudice, pursuant to FRCP 41(a)(1).

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III.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Set Aside the Order dismissing this case without prejudice (#7) should be granted. Furthermore, Plaintiff's request to file a Notice of Dismissal with Prejudice pursuant to FRCP 41(a) should be granted.

Dated this 6th day of September 2013.

COGBURN LAW OFFICES

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ORDER

THE COURT HAVING READ the foregoing Motion to Set Aside Order (ECF No. 8) and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion to Set Aside the Order dismissing this case without prejudice (ECF No. 7) is hereby **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff shall file a Notice of Voluntary Dismissal with Prejudice **by Monday, March 24, 2014**.

DATED this 3rd day of March, 2014

Gloria M. Navarro, Chief Judge
United States District Court